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Investigation Report

Operation Atlantic

Northern Territory Infrastructure Development Fund

Section 50(1) of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act)

May 2023

Office of the
Independent
Commissioner
Against
Corruption NT



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Contents

This Report	4
Introduction	4
Background.....	5
The scheme	5
Jurisdictional limitations	6
Decision to close investigation	6
Reccomendations	7

This report

- [1] I have prepared this report in accordance with section 50 of the ICAC Act.

Sub-section 50(1) provides that:

*The ICAC may make a report (an **investigation report**) on an investigation to a responsible authority for a public body or public officer whose conduct is the subject of the investigation.*

(my underlining added)

- [2] A responsible authority is defined by reference to sub-section (7). I have determined that this report should be furnished to the Chief Minister, as the public officer whose functions include making future decisions in the public interest that may be better informed by receipt of the investigation report.¹
- [3] There is no statutory mechanism to publish this report, so I will not do so.
- [4] An investigation report of the kind contemplated by section 50 may contain recommendations.² I intend to make two recommendations. One recommendation relates to a proposed amendment to the ICAC Act. In a manner consistent with other legislative suggestions I have made, I will advise the Leader of the Opposition, the Standing Committee on the ICAC, and those responsible for the review of the ICAC Act. I will not directly identify the subject matter of the investigation.

Introduction

- [5] Prior to my commencement, my predecessor commenced an investigation into allegations of improper conduct in relation to the Northern Territory Infrastructure Development Fund (NTIDF). In particular, allegations related to the decision to invest in a company known as NT Beverages.
- [6] I have since concluded that investigation and I will not make any findings. That is in large part because of jurisdictional limitations that have impeded my capacity to continue.
- [7] The purpose of this report is summarise the matter and recommend:
1. that careful consideration be given to the structure of similar entities in the future; and
 2. consideration be given to an amendment to the ICAC Act as proposed in this report.

¹ Section 50(7)(a)(ii).

² See section 56.

Background

- [8] In 2019 the former Independent Commissioner Against Corruption, Kenneth Fleming KC, commenced an investigation into matters concerning the NTIDF and, in particular, its investment in NT Beverages, a company that would cease operating not long after investments were made.
- [9] That investigation was closed shortly before I commenced. I was not satisfied that proper steps had been taken and formed the view that further investigation was warranted. I considered that it was in the public interest that further inquiry take place.
- [10] The investigation continued until late last year when I determined to cease the investigation.

The scheme

- [11] The NTIDF Ltd was established in April 2016 and was allocated around \$200 million in public funds. It was overseen by a board of directors (the board). Investment recommendations were made by the investment manager, Infrastructure Capital Group Ltd (ICG). Those investment decisions were executed by NTIDF's trustee, One Funds Management Ltd (OFM).
- [12] According to the tripartite agreement between the NTIDF, ICG and OFM, the board could issue a 'stop notice' to ICG, preventing ICG from continuing with an investment. ICG was obliged to provide certain reports to the board at various defined points in respect of an investment decision.
- [13] The NTIDF operated for approximately two years. During that period it made only one investment: NT Beverages. Its first investment in NT Beverages was in the order of around \$9.2 million. Within five months of that initial investment, further investments in the order of \$850,000 were made. Notwithstanding those investments, NT Beverages went into administration. Around \$2 million was recovered.
- [14] The NTIDF was wound up shortly thereafter.
- [15] As the investigation continued, it became apparent that the conduct of ICG should be the primary focus. However, once further business records were obtained, it became doubtful that ICG was a public body within the meaning of the ICAC Act. Having considered the matter in great detail, I decided to end the investigation.

Jurisdictional limitations

- [17] My jurisdiction is constrained by reference to the concept of improper conduct within the ICAC Act. Improper conduct can take a number of forms, including corrupt conduct, misconduct and unsatisfactory conduct.
- [18] In this case, as the investigation continued it became apparent that the only relevant form of improper conduct was that of unsatisfactory conduct. A finding of unsatisfactory conduct requires that the impugned conduct be engaged in by a public officer or public body.
- [19] Having obtained a large volume of material, I decided to obtain advice from the Solicitor-General's chambers in respect of the matter.
- [20] The advice, which I have decided to accept, is that given the particular manner in which the scheme was established, ICG was unlikely to be a public body, because it neither received public funds nor did it perform a function on behalf of the Northern Territory.

Decision to close investigation

- [21] Having formed the view as to jurisdiction with respect to ICG, I determined that it was not in the public interest to continue. While I could have continued to investigate the conduct of the NTIDF, I formed the view that there would be little utility in doing so in the absence of jurisdiction to draw conclusions about ICG.
- [22] I also took into account the historical nature of the matter, the fact that the NTIDF scheme has since shut down, and my own significant resource constraints.
- [23] Notwithstanding my decision, I remain concerned about the manner in which the investment in NT Beverages occurred. It may be that the Chief Minister considers further inquiry by another entity is warranted, but that is a matter for the Chief Minister. I note the findings and observations already made by the Auditor-General in a report prepared in March 2019. I enclose the relevant part of that report for your consideration.
- [24] Notwithstanding my decision to end this investigation without making findings, there are two recommendations that arise from this matter.

Recommendations

[25] The first relates to the scheme itself. It appears that the scheme was established to operate largely at arm's length from the Government. Indeed, it appears that only one governmental employee, Ms Jodie Ryan, participated as a member of the NTIDF board. While I appreciate that there may have been principled reasons for establishing the scheme in this way, I question the extent to which there was consideration as to how this scheme would be overseen, and the manner in which those with responsibility for decision-making would be accountable.

[26] I note in particular the following comments made by the Auditor-General in her 2019 report (at page 93):

At the time of my audit, the Agency had a number of informal processes in place to monitor the extent to which investments made or proposed by the NTIDF comply with the objectives established in the NTIDF Constitution and the Investment Management Agreement. These processes include attendance by Agency representatives (as observers) at meetings of the NTIDF Board and internal processes to ensure requests for drawdowns are appropriately actioned.

Evidence of a formal system within the Agency to measure and assess the performance of the NTIDF against the Territory's objectives could not be obtained.

In the absence of a formal performance management system within the Agency to maintain oversight of the NTIDF, there is an increased risk that the Agency will not know if, or to what extent, the Territory's performance objectives have been realised.

There is no evidence of formal processes constituting a performance management system, in place with the Agency to measure and assess whether, or to what extent, the NTG's objectives underpinning the establishment of the Fund are being achieved.

As identified earlier in this report, the Agency did not establish any performance targets to measure the extent to which the NTIDF realises its objectives economically, efficiently and effectively.

[27] For completeness I note the responses of the Agency which are also recorded in the Auditor-General's report (pages 95 – 97).

[28] In my view, there is a need to ensure the existence of robust oversight mechanisms where significant public funds are being managed by a non-governmental entity. I make the following recommendation.

Recommendation: Where the Government determines to establish a scheme which divests itself from decision-making, but where the scheme involves the management of significant public funds, any such scheme ought to have included a formal and robust process for reporting, auditing and review, so as to ensure that such funds are used appropriately.

[30] The second recommendations relates to the first.

[31] The NTIDF scheme was established prior to the commencement of the ICAC Act and so it would not have been necessary to consider whether the scheme, as established, would fall within the ICAC's jurisdiction. But such consideration ought to figure in the development of arms-length schemes into the future.

[32] At present, section 16(1)(l) the ICAC Act provides that a public body includes:

Any other body, whether incorporated or not:

(i) that receives, directly or indirectly, public resources; or

(ii) performing a public function on behalf of the Territory, a public body or a public officer (whether under contract or otherwise).

[33] As was the case here, determining whether a body is a public body, by reason of section 16(1)(l), is not always clear. Indeed, this is not the only investigation that I have had to either curtail or end because of issues relating to jurisdiction. The difficulty is that, in respect of complex matters of jurisdiction, the evidence necessary to determine the question must first be obtained. In other words, a great deal of effort is often required before the question of jurisdiction can be fully determined.

[34] In South Australia, the *Independent Commission Against Corruption Act 2012* provides that a public authority (which is the equivalent to a public body in the Northern Territory) can be declared by regulation, as can a public officer. In that way, particular individuals or entities, or categories of such, can be brought within jurisdiction and there can be no doubt about that jurisdiction.

[35] If a scheme, such as the NTIDF, were established again, and the Government wished to ensure that those involved in the scheme fell within my jurisdiction, absolute clarity could be given by making the appropriate regulation. To that end, I make the following recommendation.

Recommendation: Consideration be given to amending the ICAC Act to allow for a public officer, public body or class of officer or body, to be prescribed by regulation.

Contact the ICAC

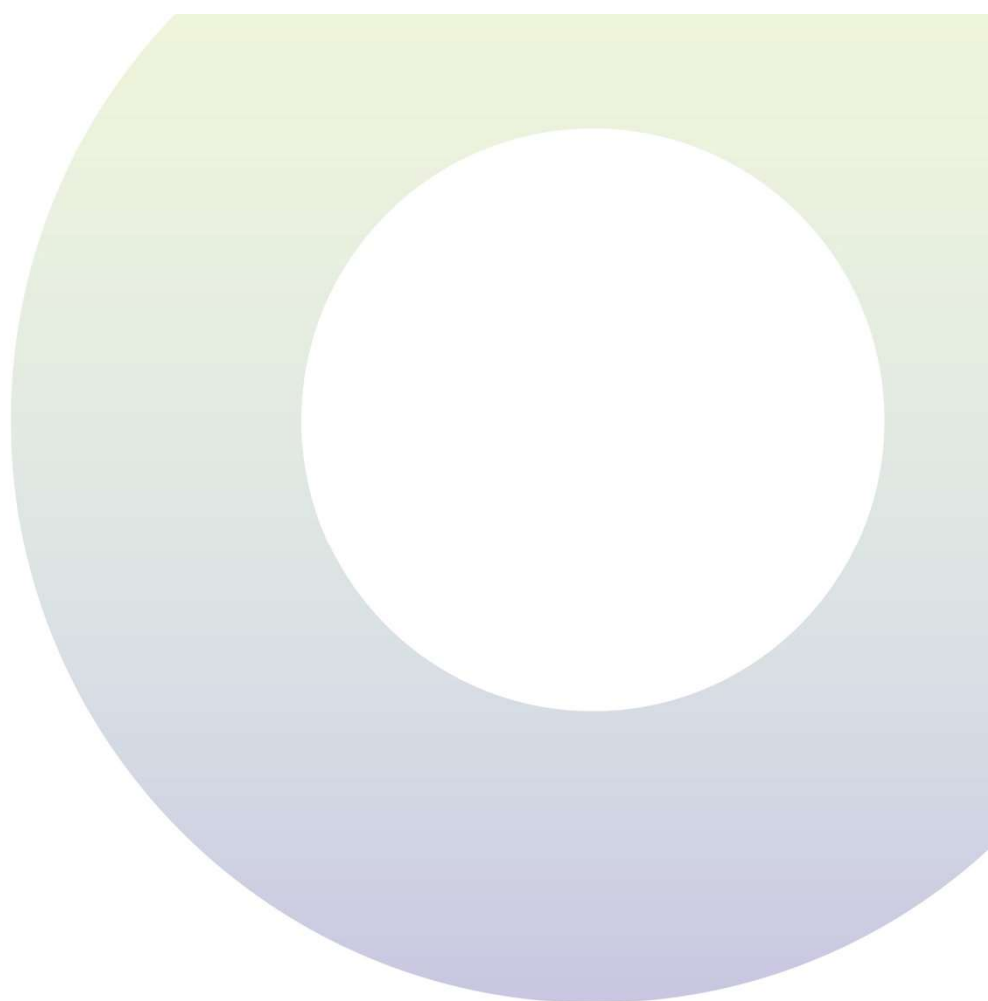
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Department of Treasury and Finance

Northern Territory Infrastructure Development Fund

Background

In November 2014, the NTG committed to allocating a portion of the proceeds from the sale of the Territory Insurance Office to fund a long-term strategic infrastructure initiative. On 6 October 2015, the former Chief Minister and the former Treasurer of the Northern Territory announced the creation of the Northern Territory Infrastructure Development Fund (NTIDF). Excerpts from the media release stated:

- *“Using \$200 million from the sale of the Territory Insurance Office as a financial cornerstone, the fund will seek a further \$800 million of capital from other Australian and overseas investors to create a \$1 billion investment pool.*
- *The fund will be used to invest in infrastructure projects across the Territory, creating revenue for the fund, essential infrastructure for Territorians and new jobs across the whole economy.*
- *The fund will be financially independent of government, with no risk to Territory taxpayers.*
- *The fund will seek to invest in a diversified portfolio of infrastructure related projects, such as roads, hospitals, schools and agricultural projects.*
- *Revenues will be re-invested into the fund, providing the opportunity to create a self-sustaining pool of capital available for new infrastructure investment.*
- *The Board of the Fund will appoint an independent commercial infrastructure fund manager, responsible for making investment decisions.”*

The NTIDF is an Australian infrastructure fund, established by the NTG, which was intended to invest primarily in Northern Territory related infrastructure assets and in projects outside the Northern Territory where those projects will deliver benefits to the Northern Territory.

Scope and Objective

The objective of the performance management system audit was to examine:

- how the Northern Territory accounts for its \$200 million investment in the NTIDF; and
- the performance management system in place at the Department of Treasury and Finance (the Agency) to assess whether the intended objectives from the Northern Territory’s investment into the NTIDF are realised efficiently, effectively and with economy.

The audit involved gaining an understanding of the structure and operations of the NTIDF including the funding structure, risks and potential returns to the Northern Territory.

The audit covered the period 1 May 2015 to 30 June 2018.

Limitations

The audit did not look at the systems or performance of non-government entities.

On 30 October 2018, the NTG announced that the NTIDF was to be wound up. My audit did not review the arrangements or obligations of the NTG as a result of this decision.

Department of Treasury and Finance cont...

Index

The report on this audit is structured as follows:

Audit Opinion	Refer page 78
Recommendations	Refer page 78
Audit Observations	Refer page 79
Purpose of the NTIDF	Refer page 79
Structure of the Fund	Refer page 80
Obligations of the Territory	Refer page 87
Returns to the Territory	Refer page 91
Further Contributions by the Territory	Refer page 92
Financial Reporting	Refer page 92
Risk Management	Refer page 93
Performance Management System	Refer page 93

Audit Opinion

The objective of the performance management system audit was to examine how the Northern Territory accounts for its \$200 million investment in the Northern Territory Infrastructure Development Fund and the performance management system in place to ensure that the Northern Territory, through the NTIDF, realises its objectives economically, efficiently and effectively. The audit involved gaining an understanding of the structure and operations of the NTIDF including the funding structure, risks and potential returns to the Northern Territory.

At the time of my audit, the Agency was unable to demonstrate that an adequate performance management system was in place to ensure that the intended objectives were being realised economically, efficiently and effectively.

Recommendations

As my audit was underway prior to the announcement on 30 October 2018 that the NTIDF was to be wound up, some of my recommendations will no longer be relevant once the dissolution of the NTIDF is effective. The recommendations do, however, identify key elements of an effective performance management system that should be taken into consideration should similar initiatives be established through NTG agencies. I recommended the Agency:

- implement a formal system for maintaining oversight of the performance of the NTIDF including establishing a system for assessing the extent to which the Territory's intended objectives have been achieved in terms of effectiveness, efficiency and economy;
- actively seek to obtain the required reports by their due date and communicate the non-compliance to those required to report;

Department of Treasury and Finance cont...

- develop and implement a process to ensure appropriate clauses are included in future financial arrangements to explicitly provide for the Territory to conduct or seek an independent review of the investment and/or application of funds drawn from the Public Account including how those funds have been applied; and
- develop and implement a process to ensure risks associated with the investment of funds are identified, assessed and documented and, to the extent necessary, risk mitigation strategies are determined and enacted.

Audit Observations

Purpose of the NTIDF

In May 2015 the NTG sought investment opportunities that *“will support the development of infrastructure using the proceeds of the sale of TIO and the long term lease of the Port of Darwin.”* (NTG Media Release, 17 June 2016) To support this objective, NTG contracted a consulting company, Granite Capital Pty Ltd, to *“develop and propose a concept for the creation of a self-sustaining pool of infrastructure capital for the Northern Territory.”* The recommendations from this report were presented in July 2015.

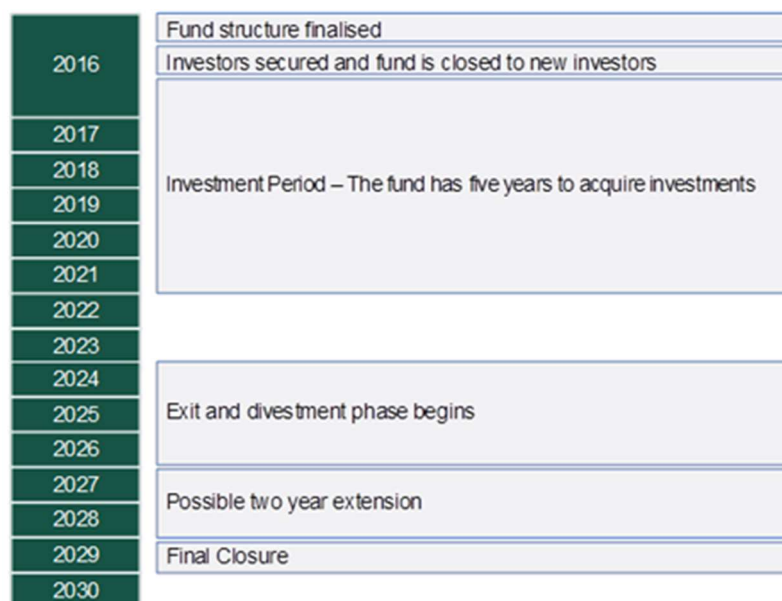
The NTG approved the establishment of the NTIDF in September 2015 as publically announced in October 2015. The Agency had responsibility for establishment of the NTIDF.

An NTIDF Fact Sheet, publically released by the Agency, documented that *“the key objective of the NTIDF is to be a long-term investor in a diversified portfolio of infrastructure assets that will:*

- *generate attractive risk-adjusted returns for all investors; and*
- *support the long term economic growth and development of the Northern Territory by investing in appropriate infrastructure projects.”* (NTIDF Fact Sheet)

The planned timeline for the major milestones related to the NTIDF are presented in Figure 1.

Figure 1: NTIDF Major Milestones Timeline



Source: NTAGO Developed

Department of Treasury and Finance cont...

Structure of the Fund

The NTIDF is “structured as a traditional 10 year closed end commercial infrastructure fund, which is an arrangement that will be familiar to most institutional investors. Investors will be able to buy a fixed amount of units in the fund up until the close date. The units will not be redeemable, but they could potentially be on-sold to other investors”. (NTIDF Fact Sheet)

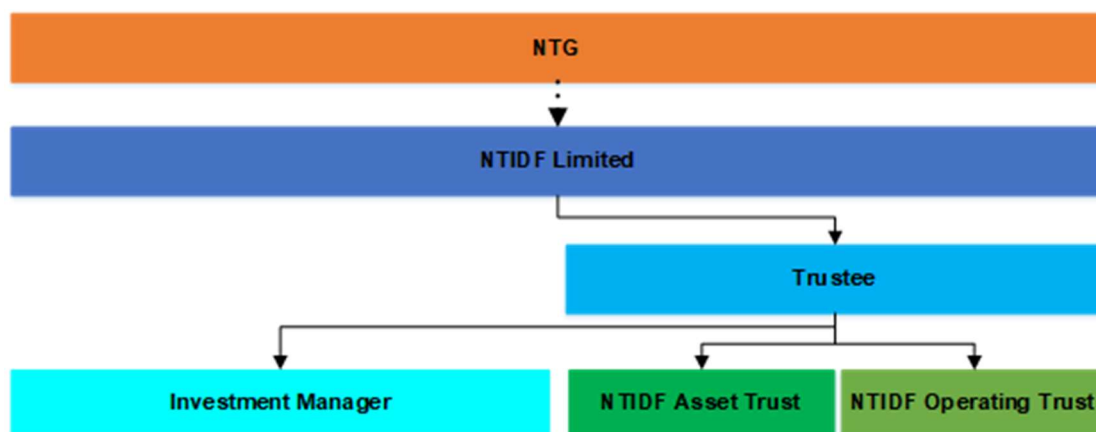
Upon establishment, the NTIDF was intended to operate at arms-length from the NTG.

An Interim Board was appointed in September 2015 with remuneration in line with the maximum amount under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* and rates schedule for senior commercial and assets management Board members. The Interim Board comprised four members: the Chair, who was a Director of the consulting company proposing the fund structure, an NTG representative and two members independent of the NTG.

The Interim Board was responsible for progressing the establishment of the NTIDF in accordance with key objectives. This included finalising the proposed structure of the NTIDF and selecting the NTIDF’s Investment Manager and Trustee.

The structure of the NTIDF was determined by the Interim Board and is depicted below.

Figure 2: NTIDF Structure



Source: NTAGO Developed

For the purpose of this report, the Fund refers to, and is comprised of, the following entities:

- NTIDF Limited
- NTIDF Asset Trust
- NTIDF Operating Trust

NTIDF Limited is a public company limited by guarantee under the *Corporations Act 2001*, and was registered in the Northern Territory on 27 April 2016. The NTIDF is governed by the Board of Directors of NTIDF Limited. It is the role of the NTIDF Board to provide governance and oversight of the Fund.

Department of Treasury and Finance cont...

The NTIDF Asset Trust and the NTIDF Operating Trust are both unregistered managed investment schemes under the *Corporations Act 2001* and operate as for-profit unit trusts. The Trust Deeds of both the NTIDF Asset Trust and NTIDF Operating Trust were signed on 5 December 2016 and the ABNs were registered on 21 December 2016.

The following entities are directly involved in the operations of the Fund:

- One Funds Management Limited as Trustee.
- Infrastructure Capital Group Limited as the Investment Manager.

The NTIDF Board appointed the Trustee and the Trustee was responsible for appointing the Investment Manager.

The Trustee was contracted through a Subscription Agreement signed by the NTG (as the Subscriber) and One Funds Management Limited (as Trustee) on 6 December 2016.

The entities involved in the establishment and operation of the NTIDF are presented in Figure 3.

Figure 3: Key entities involved in the management/operation of the NTIDF

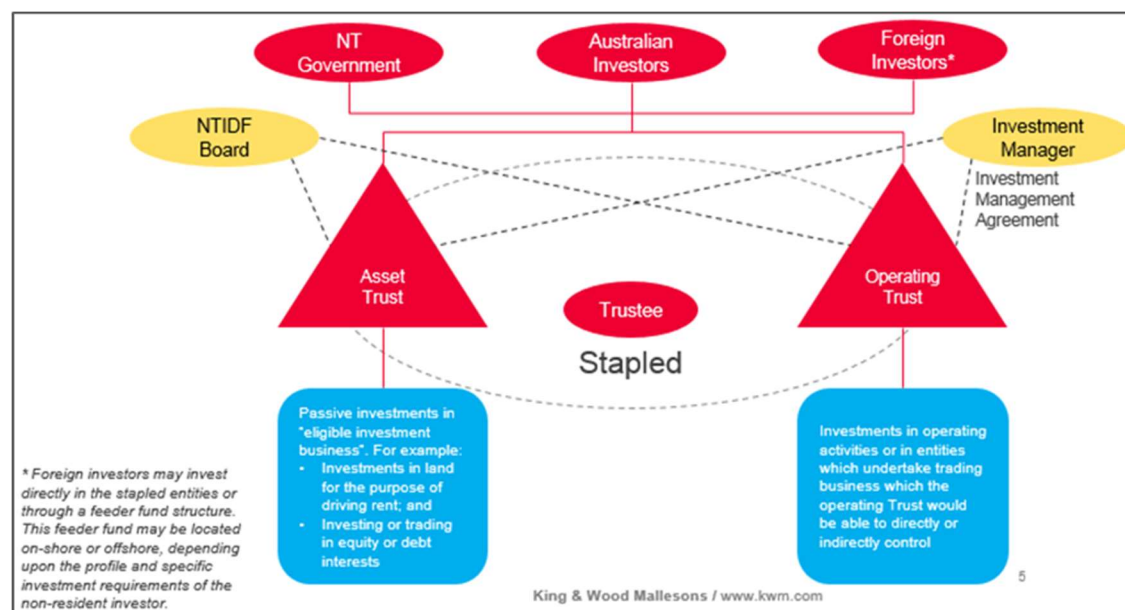
Entity	Purpose
Investor (NTG)	The NTG is the sole investor in the NTIDF and has committed \$202.5 million to the NTIDF for the purpose of investment and meeting the costs to administer the funds. The committed investment is drawn down by the NTIDF as required, and is used to fund operational expenses and investments. In exchange, the NTG receives units in the fund.
Northern Territory Infrastructure Development Fund Limited (NTIDF Limited)	NTIDF Limited is governed by the Board of Directors of NTIDF Limited. The NTIDF Board is responsible for managing the operations of the fund, considering investment recommendations from the investment manager, and providing instructions to the trustee in regards to the appointment of the investment manager. The NTIDF Board retains a right of veto over all investments and divestments.
Trustee	One Funds Management Limited, as the Trustee and Custodian of the NTIDF Trusts, is responsible for managing the assets of the trust in accordance with the Trust Deeds and ensuring the NTIDF Trusts conform to all legislative and regulatory requirements. One Investment Group provides registry, accounting and administration services to the NTIDF as required.
Investment Manager	Infrastructure Capital Group (ICG), as the investment manager, is responsible for developing a pipeline of projects, and for undertaking due diligence on potential projects and preparing investment recommendations to the NTIDF Board.
NTIDF Asset Trust	The investment objective of the NTIDF Operating Trust is to build a diversified portfolio of mature infrastructure investments that support the long term economic growth and development of the Northern Territory by investing in appropriate infrastructure projects.
NTIDF Operating Trust	The investment objective of the NTIDF Operating Trust is to build a diversified portfolio of mature infrastructure investments that support the long term economic growth and development of the Northern Territory by investing in appropriate infrastructure projects.

Source: NTAGO Developed

Department of Treasury and Finance cont...

The Interim Board released a request for expressions of interest for the role of Investment Manager in December 2016. The role of Investment Manager was awarded to Infrastructure Capital Group. An Investment Management Agreement was signed between One Funds Management Limited (Trustee), Infrastructure Capital Group (Investment Manager) and NTIDF Limited on 8 December 2016. By the end of December 2016, the NTIDF was established and fully operational. The interrelationships between the entities are presented in Figure 4.

Figure 4: NTIDF Structure



Source: Department of Treasury and Finance

Department of Treasury and Finance cont...

A summary of the events is outlined in Figure 5.

Figure 5: NTIDF Establishment Timeline

2015	May-15: Granite Capital Pty Ltd was contracted by the Agency to develop and propose a concept for the creation of a self-sustaining pool of infrastructure capital for the Northern Territory.
	Jul-15: Granite Capital Pty Ltd presented its report, recommending that the NTG establish the NTIDF.
	Sep-15: NTG announced the creation of the NTIDF, committing \$200 million from the sale of the Territory Insurance Office as a financial cornerstone of the fund.
	Sep-15: Interim Board appointed.
2016	Dec-15: The Interim Board of the NTIDF sought Expressions of Interest for the role of investment manager.
	Apr-16: The Constitution of NTIDF Limited was signed by the Board Chairman and NTG Board Member.
	May-16: The Interim Board were appointed as Board Members of NTIDF Limited.
	Jun-16: One further Board Member of NTIDF Limited was appointed by the NTIDF Board.
	Dec-16: The Trustee was contracted through a Subscription Agreement signed by the NTG.
	Dec-16: The Asset Trust was established with the Asset Trust Deed signed by the Trustee and NTIDF Limited
	Dec-16: The Operating Trust was established with the Operating Trust Deed signed by the Trustee and NTIDF Limited.
	Dec-16: The Investment Manager was contracted through an Investment Management Agreement signed by the Trustee and NTIDF Limited.

Source: NTAGO Developed

Department of Treasury and Finance cont...

Oversight by the Agency

There are various governing documents in place with regard to the Fund and the entities involved. These include the:

- NTIDF Limited Constitution;
- Trust Deeds of the NTIDF Asset Trust and NTIDF Operating Trust;
- Investment Management Agreement; and
- Subscription Agreement.

The role of the NTG in relation to the structure of the Fund is that of an investor. The Territory's investment is facilitated through contractual arrangements via a Subscription Agreement. The contractual agreements and signing authorities, as they relate to the NTG, are documented in Figure 6.

Figure 6: Involvement of the NTG as a result of the NTIDF

Entity	Document	Involvement of NTG
NTIDF Limited	NTIDF Constitution	The Constitution requires that at least one member of the Board of Directors is an NTG Director. The Treasurer of the Northern Territory has the ability to nominate the NTG Director.
Trustee	Subscription Agreement 6 December 2016	The Subscription Agreement specifies total funds of \$202,500,000 as being committed by the Territory to be invested in the Fund.
Investment Manager	Investment Management Agreement 8 December 2016	NTG had no role in establishing the contract. There are no reporting requirements between the Investment Manager and the NTG.
NTIDF Asset Trust	Asset Trust Deed 5 December 2016	NTG is a Holder of units in the trust. The Holders invest in the fund through the purchase of units. The Trust Deed establishes the rights and obligations of the Holder. The Holder is entitled to an income distribution based on the units held and unit's earnings. NTG holds 100% of the trust units.
NTIDF Operating Trust	Operating Trust Deed 5 December 2016	NTG being a Holder of units in the Fund is also considered a party in the Trust Deeds as the Trust Deeds have laid out the rights and obligations of a Holder.

Source: NTAGO Developed

Department of Treasury and Finance cont...

NTIDF Limited

NTIDF Limited was established as an independent Company by the Interim Board and approved by the NTG. The purpose of NTIDF Limited is to establish and oversee the Fund in order to support the long term economic growth and development of the Northern Territory by investing in appropriate infrastructure projects.

NTIDF Limited is governed by the NTIDF Constitution. The Constitution of NTIDF Limited was signed by the Chair and the NTG Board Member on 21 April 2016. The Agency advised that the company secretary, Boardroom Ltd, had received copies of the NTIDF Constitution signed by the remaining Directors.

From June 2016, following the appointment of an additional independent Director, the NTIDF Board consisted of five Directors. Four Directors were independent of the NTG and one was an NTG representative, being the Under Treasurer. The membership of the NTIDF Board remained unchanged at the conclusion of my audit fieldwork on 15 November 2018 and comprised the Chair, NTG Representative and three independent Directors.

At the time of writing this report, the Chairman, NTG Representative and one Independent Director remain on the Board.

The Constitution requires that at least one of the board of directors is an NTG Director. The Treasurer of the Northern Territory has the ability to nominate the NTG Director.

The Constitution does not contain any clauses pertaining to reporting requirements of the Fund, other than meeting the requirements of the *Corporations Act 2001*.

NTIDF Asset Trust Deed and NTIDF Operating Trust Deed

The Trust Deeds of the NTIDF Asset Trust and NTIDF Operating Trust were entered into between One Funds Management Limited (as Trustee) and NTIDF Limited (as Sponsor) on 5 December 2016. With reference to the Trust Deeds, the NTG is a Holder, being a Holder of Units in each Trust. Holders invest in the fund through the purchase of units and are entitled to an income distribution based on the units held and the Trusts' earnings. NTG currently holds 100% of the trust units.

The Trust Deeds contain a clause in relation to reporting by the Trustee which requires reports to be distributed to Holders. The Trustee is required to distribute:

- a) audited annual accounts at the end of each Financial Year;
 - b) a descriptive report on the investments held on a quarterly basis; and
- any other information a Holder reasonably requests.

The Trust Deeds provide for audited annual accounts for each year ended 30 June to be provided to the Agency by 31 October. Representatives of the Agency received audited annual accounts (requirement a) for the year ended 30 June 2017 from the Trustee. As at 18 December 2018, audited annual accounts for 30 June 2018 had not been received by the Agency. Agency representatives have advised me that they have sought the audited financial statements from the Trustee. The Trustee has not provided the Agency with descriptive reports on the investments (requirement b). The Agency advised that no requests for further information have been made by the NTG as Holder (requirement c).

Department of Treasury and Finance cont...

Subscription Agreement

The Subscription Agreement was entered into between the NTG, represented by the Central Holding Authority (as Subscriber), and One Funds Management Limited (as Trustee) on 6 December 2016. The Subscription Agreement establishes the responsibilities of both the Trustee and Subscriber regarding the committed funds. The Subscription Agreement contains information relating to committed funds; drawdowns; warranties; and reporting.

a) Committed Funds

The Subscription Agreement specifies a total of \$202,500,000 as being funds committed by the Territory to be invested in the Fund.

b) Drawdowns

The committed funds are held by the Subscriber and are provided to the Fund in instalments over time. The Trustee can draw the committed funds as required.

c) Warranties

The Subscription Agreement includes warranties relating to both the Trustee and Subscriber. One of the warranties applicable to the Subscriber is that the Subscriber cannot rely on statements and representation made by the Trustee or Manager of any Fund except as set out in the Trust Deed. The Subscriber is required to make its own enquiries, in particular in relation to the potential returns from and risks associated with an investment in each Fund.

d) Reporting

The Trustee is to prepare and provide to the Subscriber the following reports in accordance with the frequency set out below:

- a) updates on the Trust's assets and investment performance on a quarterly basis;
- b) disclosure of conflicts of interest within seven days of the Trustee becoming aware of the conflict; and
- c) report of any capital expenditure that is inconsistent with the Investment Instructions and Objectives within seven days of the Trustee committing to that expenditure.

The Fund made its first investment in February 2018, and as such the first substantive report should have been received within 60 days of the March 2018 quarter in accordance with the reporting requirements of the Trust Deeds. The Agency did not receive any quarterly reports.

Agency representatives advised they were not aware of any conflicts of interest (item b) nor any capital expenditure that is inconsistent with the Investment Instructions and Objectives of the Investment Management Agreement (item c).

Representatives of the Agency advised that attendance by Agency personnel as observers at NTIDF Board meetings provided the Agency with a good understanding of the performance of the Territory's investment. Notwithstanding this assertion, there were no processes to monitor and formally assess the achievement of the NTG's intended objectives as a result of establishing the Fund.

Department of Treasury and Finance cont...

Of the governance documents summarised above, none explicitly provide for the NTG to conduct or seek an independent review of the Fund and its operations. Better practice would involve financial arrangements entered into by the NTG including a specific provision for the NTG to conduct a detailed review or audit of the application of funds, if required, to ensure the funds are being used to meet the objectives of the NTG.

The Subscription Agreement does not appear to provide any conditions that enable the Holder to unilaterally void or withdraw the \$202.5 million commitment. The Trustee can cancel the amount of any undrawn commitment of a holder at any time.

The Holder can request the redemption of any amounts already invested but the redemption decision is at the discretion of the Board (as Sponsor) and Trustee. If a Holder wishes to have some or all of its Units redeemed, it must submit a redemption request to the Trustee in accordance with the Trust Deeds however, the Trustee does not have an obligation to accept a redemption request.

Investment Manager

The Investment Management Agreement was entered into between One Funds Management Limited (as Trustee), Infrastructure Capital Group Limited (as Investment Manager) and NTIDF Limited (as NTIDF Board) on 8 December 2016. There are no reporting requirements between the Investment Manager and the NTG.

Obligations of the Territory

The key obligation is the commitment by the Territory for a total of \$202,500,000 to be invested in the Fund. The Trust Deeds provide mechanisms for early termination of the two Trusts, those being:

- a resolution of the majority of Holders on the ninth anniversary of the Foundation Investor Date and at two year intervals thereafter; or
- a date specified by the Trustee with consent from the Sponsor,

following which the NTG's obligation to invest further funds is also terminated.

The funds are held by Central Holding Authority until the Trustee requests a drawdown in accordance with the agreement. The provisions relating to a drawdown are documented in the Subscription Agreement and the Trust Deeds (refer also to Governance and Oversight section of this report). The Agency is responsible for administering the NTG's payments in response to a Drawdown Notice.

Investor Commitments are to be drawn down in instalments over time, as determined by the Trustee. Before any of the committed funds are paid over to the Fund via the Trustee, the Trustee has to complete a Drawdown Notice. The Trustee must give the Subscriber at least ten business days' notice before a call is due for payment.

If the Territory fails to pay a Drawdown Notice, then the consequences range from paying interest and other costs associated with the non-payment through to NTG's rights being suspended and the requirement to forfeit or sell a portion or all of the NTG's units.

Department of Treasury and Finance cont...

Representatives of the Agency confirmed that there are formal processes in place to ensure that the NTG complies with its contractual arrangements under the Subscription Agreement and Trust Deeds. The processes implemented by the Agency are relevant only to drawdown transactions and are listed below.

- A drawdown notice in the form specified in the Trust Deeds is sent by the Trustee to the NTG, addressed to the Central Holding Authority.
- After ensuring the Drawdown Notice has been properly prepared by the Trustee, a memorandum is prepared seeking approval from the Under Treasurer to approve the requested drawdown;
- Before the approval by the Under Treasurer, the memorandum is approved by the Assistant Under Treasurer and the General Manager of Northern Territory Treasury Corporation;
- The Drawdown Notice is paid within 10 business days upon its receipt;
- The Agency ensures that unit certificates are issued by the Trustee after the NTG has transferred the funds; and
- The Agency ensures that a record is maintained of all drawdowns and unit certificates.

A walkthrough of the processes involved in a drawdown transaction was performed and the processes undertaken were consistent with the above process. The Agency advised that they are not aware of any Drawdown Notice that was not paid by the Territory in accordance with the Subscription Agreement and the Trust Deeds.

As at 30 June 2018, \$13,000,200 had been drawn down.

All of the costs associated with the Fund after it was established have been incurred by the Fund and are paid from the drawdown amounts.

Department of Treasury and Finance cont...

The NTG is liable for the following costs:

Figure 7: Expenditure paid by the NTG

Entity	Document	NTG's Obligations
NTIDF Limited	NTIDF Constitution	The Directors are entitled to remuneration as approved by the Directors. Expenses since the full establishment of the Board are incurred by the Fund. The NTG, as the sole investor, has been responsible for all of the operating costs of the Fund via the drawdowns.
Trustee	Subscription Agreement 6 December 2016	All costs, charges, expenses and outgoings incurred by the Trustee or the Sponsor in the proper performance of its duties are payable or reimbursable out of Assets. The Trustee is entitled to be paid a trustee fee equal to the higher of 0.02% per annum on the Gross Value of the Assets; or \$48,000 per annum. The Trustee is entitled to be paid an establishment fee of \$10,000.
Investment Manager	Investment Management Agreement 8 December 2016	All costs, charges, expenses and outgoings incurred by the Manager in the proper performance of its duties are payable or reimbursable out of Assets. The Manager is entitled to receive a management fee of 0.0080 of the net asset value and a commitment fee of 0.0050 of the commitment amount.
NTIDF Asset Trust	Asset Trust Deed 5 December 2016	All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee or the Sponsor in the proper performance of its duties in relation to the Trust are payable or reimbursable out of the Trust.
NTIDF Operating Trust	Operational Trust Deed 5 December 2016	All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee or the Sponsor in the proper performance of its duties in relation to the Trust are payable or reimbursable out of The Trust.

Source: NTAGO Developed

In addition to the expenditure items in the table above, other costs incurred by the NTG related to the pre-establishment costs of the Fund, such as legal fees and consultant fees.

Department of Treasury and Finance cont...

The table below shows the timeline of the drawdowns, the expenses incurred by the Fund and the costs incurred directly by NTG since establishment.

Figure 8: Expenditure by year

Description	Transfer Date	Amount (\$)
Pre-establishment costs	2014-15	176,000
Total for the year ended 30 June 2015		176,000
Life to date cost as at 30 June 2015		176,000
Pre-establishment costs	2015-16	495,620
Total for the year ended 30 June 2016		495,620
Life to date cost as at 30 June 2016		671,620
Pre-establishment costs	2016-17	66,000
Loan Agreement	25-Jul-16	500,000
Settling of Trusts	29-Nov- 16	200
1st drawdown	3-Jan-17	1,000,000
2nd drawdown	20-Apr-17	500,000
Total for the year ended 30 June 2017		2,066,200
Life to date cost as at 30 June 2017		2,737,820
3rd drawdown	10-Jul-17	500,000
4th drawdown	2-Jan-18	500,000
5th drawdown	2-Feb-18	9,500,000
6th drawdown	21 May-18	500,000
Total for the year ended 30 June 2018		11,000,000
Life to date cost as at 30 June 2018		13,737,820

Source: NTAGO Developed

Department of Treasury and Finance cont...

Returns to the Territory

The governing documents are not consistent with regard to the expected rate of return.

Figure 9: NTG Required Rate of Return

Entity	Document	NTG Required Rate of Return
NTIDF Limited	NTIDF Constitution	To ensure the NTIDF generates attractive risk-adjusted returns for all Unitholders.
Trustee	Subscription Agreement 6 December 2016	There are no clauses pertaining to the rate of return.
Investment Manager	Investment Management Agreement 8 December 2016	The Funds are to comprise long-term investments with an overall risk-adjusted internal rate of return in the order of 8% to 14%. The Funds as a whole will target a sustainable cash yield over the medium term in the order to 4% to 7% per annum, with relatively low volatility over the long term.
NTIDF Asset Trust	Asset Trust Deed 5 December 2016	There are no clauses pertaining to the rate of return.
NTIDF Operating Trust	Operating Trust Deed 5 December 2016	There are no clauses pertaining to the rate of return.

Source: NTAGO Developed

The only governing document that quantifies the expected rate of return is the Investment Management Agreement.

Representatives of the Agency confirmed that, at the time of my audit, there had been no income received by the Agency for the year ended 30 June 2018.

Department of Treasury and Finance cont...

Returns on Undrawn commitment

The undrawn commitment was \$189,499,800 [being the agreed \$202,500,000 less the \$13,000,200 already drawn down] at the time of my audit with the funds held by the Central Holding Authority. These funds are managed by Northern Territory Treasury Corporation and are invested with JANA in a managed portfolio. Representatives of the Agency confirmed the Central Holding Authority has earned \$5.28 million (2.61%) from this investment for the year ended 30 June 2018.

The cumulative value of the investment relating to the Fund at each financial year end as recorded in the general ledger of the Central Holding Authority is presented in Figure 10.

Figure 10: Undrawn Commitment

Financial Year	Beginning Balance (\$)	Transfers In / (Out) (\$)	Drawdowns (\$)	Gains/ (losses) (\$)	Ending Balance (\$)
	a	b	c	d	e = a+b+c+d
2014-15	215,000,000	-	-	(99,709)	214,900,291
2015-16	214,900,291	95,000,000	-	4,888,017	314,788,308
2016-17	314,788,308	(115,000,000)	(2,000,200)	7,434,526	205,222,634
2017-18	205,222,634	-	(11,000,000)	5,280,024	199,502,658

Source: NTAGO Developed

Further Contributions by the Territory

At the time my audit commenced, the further contributions that the Territory was expected to make related to the undrawn commitment contained in the Subscription Agreement. The value of the undrawn commitment is equal to the Commitment Amount of \$202,500,000 less total drawdowns of \$13,000,200 as at 30 June 2018 being \$189,499,800.

The Agency confirmed that any income earned on the undrawn amount does not become payable to the Fund, it remains within the Central Holding Authority.

Financial Reporting

The Central Holding Authority's investment relating to the Fund is recognised as part of Securities (current) under the Investments, Loans and Placements line item in the Treasurer's Annual Financial Report. This includes both the drawn down investment and the investment of the undrawn commitment amount.

The accounting policy disclosed in the Treasurer's Annual Financial Report states that the investment is initially recorded at cost and subsequently measured at amortised cost or at net market value, after deducting estimated costs of realisation at reporting date.

Department of Treasury and Finance cont...

Risk Management

As noted above the key objective of the Fund is *“to be a long-term investor in a diversified portfolio of infrastructure assets”*.

The Trust Deeds state that infrastructure assets may include “greenfield” developments (new projects), “brownfield” projects (where pre-existing facilities are modified, upgraded or expanded) as well as the purchase of government assets, capital investments in existing companies and other infrastructure related investments.

The Investment Management Agreement provides that:

- no more than 30% of the total investment can be invested outside of the Territory.
- no more than 20% of the total investment can be invested overseas.

There are no Value for Territory requirements in any of the agreements to which the NTG is a party.

As the NTIDF was established as an independent fund, there are no specific NTG obligations to approve any investments made by the Fund or to assist the investments to succeed.

Specific risks relating to the Fund are not documented in the Agency’s risk register.

Performance Management System

At the time of my audit, the Agency had a number of informal processes in place to monitor the extent to which investments made or proposed by the NTIDF comply with the objectives established in the NTIDF Constitution and the Investment Management Agreement. These processes include attendance by Agency representatives (as observers) at meetings of the NTIDF Board and internal processes to ensure requests for drawdowns are appropriately actioned.

Evidence of a formal system within the Agency to measure and assess the performance of the NTIDF against the Territory’s objectives could not be obtained.

In the absence of a formal performance management system within the Agency to maintain oversight of the NTIDF, there is an increased risk that the Agency will not know if, or to what extent, the Territory’s performance objectives have been realised.

There is no evidence of formal processes constituting a performance management system, in place within the Agency to measure and assess whether, or to what extent, the NTG’s objectives underpinning the establishment of the Fund are being achieved.

As identified earlier in this report, the Agency did not establish any performance targets to measure the extent to which the NTIDF realises its objectives economically, efficiently and effectively.

Department of Treasury and Finance cont...

A comparison of the extent to which the objectives had been realised at the time of the audit to the key requirements outlined in a Media Release dated 6 October 2015 is presented in Figure 11.

Figure 11: Performance Analysis

NTG Objective (based on the Media Release dated 6 October 2015 announcing the creation of the NTIDF)	Current state at time of audit
Using \$200 million from the sale of the Territory Insurance Office as a financial cornerstone, the fund will seek a further \$800 million of capital from other Australian and overseas investors to create a \$1 billion investment pool.	At the time of audit fieldwork, no third parties had invested in the Fund.
The fund will be used to invest in infrastructure projects across the Territory, creating revenue for the fund, essential infrastructure for Territorians and new jobs across the whole economy.	Of the total drawdowns of \$13 million, \$9.5 million was drawn down for investment and \$3.5 million was drawn down to meet operational expenses of the Fund.
The fund will be financially independent of government, with no risk to Territory taxpayers.	<p>The Agency presently has a number of informal processes in place to monitor the extent to which investments made or proposed by the NTIDF comply with the objectives established in the NTIDF Constitution and the Investment Management Agreement.</p> <p>Specific risks relating to the Fund have not been identified and recorded in the Agency's risk register.</p> <p>As the sole investor in the Fund, the Territory continues to bear all operating and investment risks associated with the Fund.</p>
The fund will seek to invest in a diversified portfolio of infrastructure related projects, such as roads, hospitals, schools and agricultural projects.	At the time of audit fieldwork, the Fund had made one investment.
Revenues will be re-invested into the fund, providing the opportunity to create a self-sustaining pool of capital available for new infrastructure investment.	The first returns on investment were not due until after 30 June 2018 and consequently at the time of the audit there was no evidence available to support this objective.
The Board of the Fund will appoint an independent commercial infrastructure fund manager, responsible for making investment decisions.	The Investment Manager was contracted through an Investment Management Agreement in December 2016.

Source: NTAGO Developed

Department of Treasury and Finance cont...

The Department of Treasury and Finance has commented:

The Northern Territory Government's intention in establishing the NTIDF was for it to be a fully independent infrastructure investment fund, with government's role essentially that of a unitholder or investor. Having a fully independent structure was considered a critical element if the Fund was to have any prospects of attracting external investment.

This is reflected in the structure of the NTIDF ultimately implemented, whereby government did not have the power to dictate what projects the NTIDF would invest in, nor have the power to veto any investment decisions that were duly recommended by the independent Investment Manager and approved by the NTIDF Board.

DTF's role in establishing the NTIDF was to ensure that the structure selected was established with appropriate governance, so that each party had clearly defined roles, while maintaining government at arm's length from the management, oversight, operation and investment making processes of the NTIDF.

DTF does not believe the overall audit finding is representative of the independent structure of the Fund that was established and provides the following comments in response to the four specific recommendations identified by the Audit.

1. Implement a formal system for maintaining oversight of the performance of the NTIDF

Once the formal governance structure of the NTIDF was established, it was DTF's primary responsibility to ensure that sufficient funding was appropriately set aside to meet government's commitment to investing in the NTIDF, and to ensure no funds were committed without first obtaining assurance that either the expenses to be reimbursed were appropriate or that investments were made in line with the objectives of the NTIDF.

DTF had a robust system in place to ensure that prior to transferring any funding to the NTIDF, a determination was received from the independent Trustee that the funds requested were reasonable expenses of the NTIDF, or were for investments that had validly been recommended by the Investment Manager and had not been vetoed by the NTIDF Board.

In addition, as identified by Audit, DTF had established a number of processes to monitor the extent to which investments ultimately made by the NTIDF were in accordance with the objectives of the Fund. These processes included attendance at Board meetings as observers; access to Board papers that included detailed reports from the Trustee and Investment Manager; and regular correspondence and meetings with relevant parties.

These combined processes enabled the agency to closely monitor the performance of the NTIDF. It was primarily this close monitoring of performance and constant discussions with the NTIDF Board contributed to the assessment from all parties that the NTIDF should be wound up.

Department of Treasury and Finance cont...

The Department of Treasury and Finance comments continued:

2. *Actively seek to obtain required reports by their due date and communicate the non-compliance to those required to report*

DTF did receive regular, far more detailed reporting on the NTIDF and its investments from the Trustee than required under the subscription agreement and trust deeds. This reporting was comprehensive and provided sufficient information for DTF and government to form an informed view of how the Territory's investment in the NTIDF was performing.

Financial reports received from the Trustee included:

- monthly financial statements including statement of Profit and Loss; Balance Sheet; Statement of Cash Flows
- supporting documents including any invoices received and paid; formation costs; creditors; cash flow workings; ledger reports
- tables showing every expense paid out of the trusts, including date, description, amount, and category of expense
- once the NTIDF had made its only investment, being convertible notes in NT Beverages, the Trustee's reports included details such as amount paid, face value, interest rate, and amount of interest receivable

While the 2017 audited annual accounts were prepared and provided in a timely manner, as identified by audit, the 2018 audited annual accounts were not provided by the Trustee in the timeframe required. However, this was known by DTF, which followed up at regular intervals with the Trustee. The Trustee advised DTF that the delay was due to the fact that the NTIDF had been wound up and, as required by accounting standards, the financial statements were required to be prepared on a wind-up basis rather than on a going concern basis.

DTF can advise that the audited annual accounts for 2018 have subsequently been finalised, with no matters of note provided by the NTIDF's auditor. Aside from following up with the Trustee, DTF had little control over the timeliness of the 2018 accounts. Given that drafts had been provided and the reasons for the delay had been communicated, it is considered by DTF that the delay in finalising the 2018 accounts had no bearing on the performance of the NTIDF.

3. *Ensure the Northern Territory Government has the ability to independently review the application of funds*

DTF acknowledges that it is usual practice for government in financial arrangements to be able to seek an independent review of the investment and/or application of funds drawn from the public account, including how those funds have been applied and this recommendation will be duly considered in the event that any future investment fund of this nature is proposed by Government.

Department of Treasury and Finance cont...

The Department of Treasury and Finance comments continued:

In relation to the NTIDF, as part of the Fund's governance, a Trust structure was established, with the Trustee acting as an independent custodian on behalf of investors. Prior to issuing any drawdown notice requesting funds from investors, the independent Trustee was required to ensure the application of the funds was consistent with the objectives of the NTIDF and was for either eligible operating expenses or an investment that had been duly recommended by the Investment Manager and not vetoed by the NTIDF Board.

It was therefore considered that having the ability to independently review the application of funds already existed. Furthermore, having the ability for government to conduct or seek an independent review or audit of the application of funds by a party other than the Trustee was considered contrary to the independent nature of the NTIDF and the objective of attracting third party investors.

4. *Ensure risks associated with the investment of funds are identified assessed and documented*

As noted above, there were robust frameworks in place that were designed to mitigate the risk of the Investment Manager entering into an investment that was not compliant with the objectives documented within the NTIDF Constitution, Trust Deeds and the Investment Management Agreement, and processes to ensure that funds were only provided to the NTIDF trustee following receipt of a duly executed drawdown notice in accordance with government's contractual commitments under the subscription agreement.

Other than this, DTF had no ability to dictate what investments the NTIDF made, or any ability to veto proposed investments. As such, there was little ability for DTF to manage the risks associated with the specific investments that the NTIDF contemplated and ultimately made.

DTF also had appropriate risk management strategies in place in relation to the investment of undrawn funds that were held in the Central Holding Authority, similar to those risk strategies employed in other financial investments held by government (e.g. Conditions of Service Reserve).